UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

No. 3903 Civil

STATE OF OHIO ex Rel. GEORGE S. HAWKE,
Relator,

vs.

TED W. BROWN, as Secretary of State of Ohio, and as Chief Election Officer of Ohio,
Respondent

JURISDICTIONAL STATEMENT UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

Relator presents the following statement as the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon Appeal to review the final Decree of February 18, 1954 in the above entitled cause sought to be reviewed.

The original action before the Three-Judge District Court was brought under authority of the Federal Declaratory Judgment Act, sec. 2201, Title 28, U. S. Code.

(A) Statutory Provisions

This is a direct Appeal to the U. S. Supreme Court from a Three-Judge District Court, as provided in Section 2281

and 2284 Title 28, U. S. Code. Relator seeks an injunction against the enforcement of Ohio statutes, upon the ground of the unconstitutionality of such State Statutes, by an application to a District Court of Three Judges.

Section 1253 of Title 28 U. S. Code pertains to "Direct Appeals from decisions of Three-Judge Courts. Any party may appeal to the Supreme Court from an order denying a permanent injunction in a civil action required to be heard and determined by a District Court of Three Judges.

(B) The Date of the Decree Sought to be Reviewed

Is February 18, 1954 and the date upon which the application for Appeal was presented is March 19th, 1954.

(C) Nature of Cause and Ruling Below

This action under the Federal Declaratory Judgment Act, namely Section 2201, Title 28, U. S. C., arose as the result of newly worded Statutes of Ohio, Sections 4785-91 and Section 4785-107, General Code, effective January 1, 1952.

As matters now stand, no Ohio voters, other than Republican and Democratic adherents, are permitted under the laws of Ohio to either nominate or to vote for any Independent Candidates, such as Prohibition, Socialist, Progressive, or the like, for their choice of Presidential Electors for the State of Ohio, in any possible way.

Relator for himself and on behalf of other Independent Voters, seeks a Declaratory Judgment and a Permanent Injunction to determine their Federal Civil Rights as Ohio voters, and they claim that said Ohio Laws unlawfully deny them their civil rights to vote in any manner for Presidential Electors, because they are not members of either of the present two parties. The validity of said State Statutes is drawn in question, on the ground that they are repugnant to the 14th Amendment to the United States Constitution, guaranteeing "Equal Protection of the Law."

The Jurisdiction of the U. S. District Court is conferred by Section 1343, Title 28, U. S. C. providing original jurisdiction of any civil action, (3) To redress the deprivation under color of any State law or any right or privilege secured by the Constitution for equal rights of Citizens.

(D) **Decree of the District Court**

On February 2, 1954 the Three-Judge District Court handed down its Findings of Fact and Conclusions of law, to the effect that there was no "actual controversy" appropriate for judicial determination involved in this Declaratory Judgment case, and that in the absence of an "actual controversy," the Court had no power to grant the relief requested in Relator's Complaint. The Decree of February 2, 1954 dismissed the Complaint at Relator's costs.

WHEREUPON on February 8, 1954 the Relator filed his Motion for a New Trial, which was overruled on February 18, 1954, hence this Appeal.

Relator, therefore, respectfully submits that the Supreme Court of the United States has Jurisdiction of this Appeal.

GEORGE S. HAWKE,
1413 *First Nat. Bank Bldg.,*
Cincinnati, O.,
Atty. for Relator.

Dated March 19, 1954.

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

Filed Feb. 2, 1954. Howard E. Parker, Clerk

Civil Action No. 3903

STATE OF OHIO, ex Rel. GEORGE S. HAWKE, *Relator*,

v.

TED W. BROWN as Secretary of State of Ohio, and as Chief Election Officer of Ohio, Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an action brought by the relator as a citizen of the United States and as a duly qualified independent voter of the State of Ohio, for himself and on behalf of other independent voters of the State of Ohio similarly situated, against Ted W. Brown as Secretary of the State of Ohio and as Chief Election Officer of the State of Ohio.

The complaint alleges that Sections 4785-91 and 4785-107 of the Ohio General Code are unconstitutional in that said statutes allegedly deny relator and others who are not members of either the Republican or the Democratic political parties a right to vote for Ohio presidential electors. It is also alleged that Section 4785-91 of the Ohio General Code has as its purpose the elimination of independent candidates for state officers other than those of presidential electors, in that the necessary percentage of nominating signatures on a petition has been raised to 7 per cent of the total governors vote from a former 1 per cent of said vote. The relator seeks declaratory judgment that the above mentioned statutes are unconstitutional and an injunction against the respondent from enforcing said statutes. The respondent filed a motion to dismiss upon the ground (1) that the court lacks jurisdiction over the subject matter and (2) that the complaint fails to state a claim against respondent upon which relief can be granted.

The cause came on to be heard before the Honorable Florence E. Allen, Judge of the United States Court of Appeals for the Sixth Circuit, the Honorable Mell G. Underwood and the Honorable Lester L. Cecil, Judges of the United States District Court for the Southern District of Ohio, and the Court, having heard the arguments of counsel and being fully advised in the premises, makes the following findings of fact and conclusions of law:

Findings of Fact

1. There is no evidence before this Court of any action taken by the relator or others, including the respondent, relative to the nomination and election of independent candidates for the office of presidential electors or other state offices under the statutes in question.

Conclusions of Law

1. There is no actual controversy appropriate for judicial determination involved in this case.
2. This Court, in the absence of an actual controversy, has no power to grant the relief requested in relator's complaint.
3. The motion of the respondent to dismiss should be sustained.

(S.) Florence E. Allen,
United States Circuit Judge.
(S.) Mell G. Underwood,
United States District Judge.
(S.) Lester L. Cecil,
United States District Judge.

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MAR 31 1954

HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 666

STATE OF OHIO EX REL. GEORGE S. HAWKE,
Appellant,

vs.

TED W. BROWN, AS SECRETARY OF STATE OF OHIO, AND AS CHIEF ELECTION OFFICER OF OHIO

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

STATEMENT OPPOSING JURISDICTION AND MOTION TO AFFIRM

C. WILLIAM O'NEIL,
Attorney General of Ohio,

JOSEPH S. GILL,
First Assistant Attorney,
General of Ohio,
Counsel for Appellee.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CIVIL ACTION NO. 3,903

STATE OF OHIO EX REL. GEORGE S. HAWKE,
Relator,

vs.

TED W. BROWN, AS SECRETARY OF STATE OF OHIO, AND AS CHIEF ELECTION OFFICER OF OHIO
Respondent

STATEMENT OPPOSING JURISDICTION AND MOTION TO AFFIRM

This is a direct appeal from a final order entered February 18, 1954 by a district court of three judges specially constituted pursuant to Title 28, Section 2284, United States Code. Appeal was allowed on March 23, 1954. A copy of the findings of fact and conclusions of law of the lower court are attached hereto.*

This action was begun by appellant's petition for a declaratory judgment that former Sections 4785-91 and 4785-107, General Code of Ohio, were repugnant to the 14th Amendment to the United States Constitution. Former Section 4785-91, General Code, provided in part as follows:

> "In addition to nominations of candidates of political parties for election to offices to be voted for at the next

*(Clerk's Note. The findings of fact and conclusions of law are printed as an Appendix to the Statement as to Jurisdiction and are not reprinted here.)

following general election, independent candidates for election to offices to be voted at such general election, excepting candidates for presidential electors, may be nominated by nominating petitions. * * * Each nominating petition herein provided for, except nominating petitions for candidates provided for in section 4785-90 of the General Code, shall be signed by qualified electors of the state, district, county or municipality in which the candidate designated therein would be a candidate for election as an officer thereof, not less in number than seven per cent of the number of electors who voted for governor at the next preceding general election for the office of governor in the state or in the respective district, county or municipality; provided, however, that no such nominating petition shall be accepted for filing or filed if it appears on its face to contain signatures aggregating in number more than twice the minimum aggregate number of signatures required by law, or less than twenty five signatures; * * *"

In the recodification of the Ohio General Code into the Revised Code, this language was unchanged and became Section 3513.27 Revised Code, effective until December 31, 1953. Effective January 1, 1954 Section 3513.27, Revised Code, was repealed and Sections 3513.251 to 3513.258, Revised Code, were enacted to spell out its provisions in detail as to each elective office in Ohio. These latter sections make no provision for the nomination of independent candidates for presidential electors.

Former Section 4785-107, General Code, provided for the form of the presidential ballot and has been recodified as Section 3505.10, Revised Code.

Plaintiff-appellant's complaint was that the above statutes were unconstitutional in that they did not provide for independent candidates for the office of presidential elector, and in that the requirement of the signatures of 7% of the electors was so burdensome as to deprive inde-

pendent candidates of an opportunity to be on the ballot. No evidence was introduced that any independent candidate for the office of presidential elector or any other office had sought to qualify, or that the appellee had taken any action under the statutes which appellant contends are invalid.

As indicated by its opinion, the lower court found that no actual controversy was presented upon which it could grant a declaratory judgment and appellee's motion to dismiss was sustained.

It is submitted that the action of the lower court was clearly correct and should be affirmed. It is axiomatic that courts do not undertake to give advisory opinions. Since no one has attempted to qualify as an independent candidate for presidential elector, or for any other office, and since the appellee has taken no action with regard to such an attempted qualification, no case or controversy is presented. Appellant alleges nothing except his right to vote in a theoretically pure election, and that does not give him a basis to seek a declaratory judgment.

WHEREFORE, appellee respectfully moves that the within appeal be dismissed or that the judgment and decree of the lower court be affirmed.

C. WILLIAM O'NEIL,
Attorney General,

JOSEPH S. GILL,
First Assistant
Attorney General,
Attorneys for Appellee

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CIVIL ACTION NO. 3903

STATE OF OHIO, EX REL. GEORGE S. HAWKE,
Relator,

v.

TED W. BROWN AS SECRETARY OF STATE OF OHIO, AND AS CHIEF ELECTION OFFICER OF OHIO,
Respondent

DECREE

Pursuant to the findings of fact and conclusions of law attached hereto,

It is hereby ordered, adjudged and decreed:

That the complaint herein be, and it hereby is dismissed, at relator's costs, to which ruling the relator excepts.

(S.) FLORENCE E. ALLEN,
United States Circuit Judge.

(S.) MELL G. UNDERWOOD,
United States District Judge.

(S.) LESTER L. CECIL,
United States District Judge.

No. 666. OHIO EX REL. HAWKE *v.* BROWN, SECRETARY OF STATE OF OHIO. Appeal from the United States District Court for the Southern District of Ohio. *Per Curiam:* The motion to affirm is granted and the judgment is affirmed. *George S. Hawke* for appellant. *C. William O'Neil,* Attorney General of Ohio, and *Joseph S. Gill,* First Assistant Attorney General, for appellee. Reported below: 122 F. Supp. 149.